IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SWATCH AG (SWATCH SA) (SWATCH LTD.) Plaintiff, v. TARGET CORP., and TARGET BRANDS, INC., Defendants.	**14 Civ. 1580 (KPF)** **ANSWER AND COUNTERCLAIMS OF DEFENDANTS TARGET CORP. AND TARGET BRANDS, INC.**

Come now Defendants Target Corp. and Target Brands, Inc. (hereinafter "Defendants"), and file their Answer to Swatch AG's (hereinafter "Plaintiff") Complaint as follows:

1. Defendants are without sufficient information to admit or deny the allegations in ¶1, so therefore deny same.

2. Defendants admit the allegations in ¶2 of the Complaint.

3. Defendants admit the allegations in ¶3 of the Complaint.

4. Defendants deny the allegations in ¶4 of the Complaint.

5. Defendants admit that the Plaintiff has brought the claims described therein, but deny that Plaintiff should prevail on same and/or that it is entitled to the relief sought.

6. Defendants admit the allegations in ¶6 of the Complaint.

7. Defendants admit the allegations in ¶7 of the Complaint.

8. Defendants admit that the Court has personal jurisdiction over them. Defendants deny all remaining allegations in ¶8 of the Complaint.

9. Defendants admit the allegations in ¶9 of the Complaint.

10. Defendants admit the allegations in ¶10 of the Complaint.

11. Defendants deny the allegations in ¶11 of the Complaint.

12. Defendants are without sufficient information to admit or deny the allegations in ¶12, so therefore deny same.

13. Defendants are without sufficient information to admit or deny the allegations in ¶13, so therefore deny same.

14. Defendants are without sufficient information to admit or deny the allegations in ¶14, so therefore deny same.

15. Defendants are without sufficient information to admit or deny the allegations in ¶15, so therefore deny same.

16. Defendants are without sufficient information to admit or deny the allegations in ¶16, so therefore deny same.

17. Defendants are without sufficient information to admit or deny the allegations in ¶17, so therefore deny same.

18. Defendants are without sufficient information to admit or deny the allegations in ¶18, so therefore deny same.

19. Defendants are without sufficient information to admit or deny the allegations in ¶19, so therefore deny same.

20. Defendants deny the allegations in ¶20 of the Complaint.

21. Defendants deny the allegations in ¶21 of the Complaint.

22. Defendants deny the allegations in ¶22 of the Complaint.

23. Defendants deny the allegations in ¶23 of the Complaint.

24. Defendants deny the allegations in ¶24 of the Complaint.

25. Defendants deny the allegations in ¶25 of the Complaint.

26. Defendants deny the allegations in ¶26 of the Complaint.

27. Defendants deny the allegations in ¶27 of the Complaint.

28. Defendants deny the allegations in ¶28 of the Complaint.

29. Defendants deny the allegations in ¶29 of the Complaint.

30. Defendants deny the allegations in ¶30 of the Complaint.

31. Defendants deny the allegations in ¶31 of the Complaint.

32. Defendants deny the allegations in ¶32 of the Complaint.

33. Defendants deny the allegations in ¶33 of the Complaint.

34. Defendants deny the allegations in ¶34 of the Complaint.

35. Defendants admit that Plaintiff provided notice to Defendants of certain of Plaintiff's claims prior to filing this lawsuit, but Defendants deny the remaining allegations in ¶35 of the Complaint.

36. Defendants deny the allegations in ¶36 of the Complaint.

37. Defendants are without sufficient information to admit or deny the allegations in ¶37, so therefore deny same.

38. Defendants deny the allegations in ¶38 of the Complaint.

39. Defendants deny the allegations in ¶39 of the Complaint.

40. Defendants deny the allegations in ¶40 of the Complaint.

41. Defendants deny the allegations in ¶41 of the Complaint.

42. Defendants incorporate the above paragraphs as if fully set forth herein.

43. Defendants deny the allegations in ¶43 of the Complaint.

44. Defendants admit that the Plaintiff has brought the claims cited in ¶44 of the Complaint, but deny that Plaintiff should prevail on same and/or is entitled to the relief sought..

45. Defendants deny the allegations in ¶45 of the Complaint.

46. Defendants deny the allegations in ¶46 of the Complaint.

47. Defendants deny the allegations in ¶47 of the Complaint.

48. Defendants deny the allegations in ¶48 of the Complaint.

49. Defendants deny the allegations in ¶49 of the Complaint.

50. Defendants deny the allegations in ¶50 of the Complaint.

51. Defendants deny the allegations in ¶51 of the Complaint.

52. Defendants deny the allegations in ¶52 of the Complaint.

53. Defendants deny the allegations in ¶53 of the Complaint.

54. Defendants incorporate the above paragraphs as if fully set forth herein.

55. Defendants deny the allegations in ¶55 of the Complaint.

56. Defendants deny the allegations in ¶56 of the Complaint.

57. Defendants deny the allegations in ¶57 of the Complaint.

58. Defendants deny the allegations in ¶58 of the Complaint.

59. Defendants deny the allegations in ¶59 of the Complaint.

60. Defendants admit the allegations in ¶60 of the Complaint.

61. Defendants deny the allegations in ¶61 of the Complaint.

62. Defendants deny the allegations in ¶62 of the Complaint.

63. Defendants deny the allegations in ¶63 of the Complaint.

64. Defendants deny the allegations in ¶64 of the Complaint.

65. Defendants deny the allegations in ¶65 of the Complaint.

66. Defendants deny the allegations in ¶66 of the Complaint.

67. Defendants deny the allegations in ¶67 of the Complaint.

68. Defendants incorporate the above paragraphs as if fully set forth herein.

69. Defendants deny the allegations in ¶69 of the Complaint.

70. Defendants admit that the Plaintiff has brought the claims cited in ¶70 of the Complaint, but deny that it should prevail on same and/or that it is entitled to the relief sought..

71. Defendants deny the allegations in ¶71 of the Complaint.

72. Defendants deny the allegations in ¶72 of the Complaint.

73. Defendants deny the allegations in ¶73 of the Complaint.

74. Defendants deny the allegations in ¶74 of the Complaint.

75. Defendants deny the allegations in ¶75 of the Complaint.

76. Defendants deny the allegations in ¶76 of the Complaint.

77. Defendants deny the allegations in ¶77 of the Complaint.

78. Defendants incorporate the above paragraphs as if fully set forth herein.

79. Defendants admit that the Plaintiff has brought the claims cited in ¶79 of the Complaint, but deny that it should prevail on same and/or that it is entitled to the relief sought.

80. Defendants deny the allegations in ¶80 of the Complaint.

81. Defendants deny the allegations in ¶81 of the Complaint.

82. Defendants deny the allegations in ¶82 of the Complaint.

83. Defendants deny the allegations in ¶83 of the Complaint.

84. Defendants deny the allegations in ¶84 of the Complaint.

85. Defendants admit the allegations in ¶85 of the Complaint.

86. Defendants admit the allegations in ¶86 of the Complaint.

AFFIRMATIVE DEFENSES

Without prejudice to the denials set forth in their Answer and to their ability to seek and allege any and all defenses not presently known or that are revealed during the course of discovery, Defendants assert the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of acquiescence.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the purported Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress are functional.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because the purported Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress are not inherently distinctive and lack secondary meaning.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has suffered no damages and/or has failed to mitigate their damages, if any.

EIGHTH AFFIRMATIVE DEFENSE

Defendants' sale of the accused watches is not likely to cause confusion, mistake or deception among the general purchasing public as to the origin of the watches.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the purported Zebra Watch Trade Dress and the Multi-Color Watch Trade Dress are generic.

DEFENDANTS' COUNTERCLAIM COMPLAINT FOR A DECLARATORY JUDGMENT OF NON-INFRINGEMENT

Defendants bring this Counterclaim Complaint seeking a declaratory judgment that they have not infringed Plaintiff Swatch AG's ("Swatch") purported Zebra Watch Trade Dress or Multi-Color Watch Trade Dress, and that Swatch does not have any protectable trade dress in the asserted Zebra Watch or Multi-Color Watch design.

As and for its Counterclaim Complaint against Plaintiff, Defendants hereby state and allege the following:

PARTIES

1. Defendant Target Corp. is a Minnesota corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403.

2. Defendant Target Brands, Inc. is a Minnesota corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403.

3. Upon information and belief, Plaintiff Swatch is a corporation duly organized and existing under the laws of Switzerland, located at 94 Rue Jakop Stampfli, CH-25009 Bienne, Switzerland.

COUNT 1: DECLARATION OF INVALIDITY, UNENFORCEABILITY OR NON-INFRINGMENT OF PLAINTIFF'S ALLEGED TRADE DRESS

4. Defendants restate and re-allege all of the above paragraphs as though fully set forth herein.

5. This Counterclaim arises under the Lanham Act, 15 U.S.C. §1141(1), and the Declaratory Judgment provisions of 28 U.S.C. §§2201 and 2202. This Court's jurisdiction of the subject matter of this Counterclaim is based upon 28 U.S.C. §1338. Venue in this District is appropriate under 28 U.S.C. §1391.

6. Plaintiff Swatch has alleged trade dress infringement of its purported Zebra Watch and Multi-Color Watch trade dress under 15 U.S.C. §1125(a).

7. Defendants allege that the Zebra Watch and the Multi-Color Watch trade dress are invalid and unenforceable.

8. Defendants believe and allege that their watch products do not infringe upon Swatch's purported Zebra Watch or Multi-Color Watch trade dress rights.

COUNT 2: DECLARATION OF NO FALSE DESIGNATION OF ORIGIN, FALSE ADVERTISING, OR UNFAIR COMPETITION OF PLAINTIFF'S ALLEGED TRADE DRESS

9. Defendants restate and re-allege all of the above paragraphs as though fully set forth herein.

10. Defendants allege that Swatch's purported Zebra Watch and Multi-Color Watch trade dress rights are invalid and/or unenforceable.

11. Defendants believe and allege that there has been no false designation of origin, false advertising, or unfair competition of Swatch's purported Zebra Watch or Multi-Color Watch trade dress rights.

COUNT 3: DECLARATION OF NO TRADE DRESS INFRINGMENT UNDER NEW YORK LAW DUE TO INVALIDITY, UNENFORCEABILITY OR NON-INFRINGMENT OF PLAINTIFF'S PURPORTED TRADE DRESS RIGHTS

12. Defendants restate and re-allege all of the above paragraphs as though fully set forth herein.

13. Defendants allege that Swatch's purported Zebra Watch and Multi-Color Watch trade dress rights under New York State common law are invalid and/or unenforceable.

14. Defendants believe and allege that their products do not infringe upon Swatch's purported Zebra Watch or Multi-Color Watch trade dress rights under New York State common law.

COUNT 4: DECLARATION OF NO UNFAIR COMPETITION UNDER NEW YORK LAW DUE TO INVALIDITY, UNENFORCEABILITY OR NON-INFRINGMENT OF PLAINTIFF'S PURPORTED TRADE DRESS RIGHTS

15. Defendants restate and re-allege all of the above paragraphs as though fully set forth herein.

16. Defendants allege that Swatch's purported Zebra Watch and Multi-Color Watch trade dress rights are unenforceable.

17. Defendants allege that their products do not infringe upon Swatch's purported Zebra Watch and Multi-Color Watch trade dress rights.

JURY DEMAND

Defendants demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully request:

A. A final judgment dismissing the Plaintiff's Complaint and denying all relief sought therein;

B. A declaration and judgment declaring that Swatch's purported Zebra Watch and Multi-Color Watch trade dress rights are unenforceable and/or invalid;

C. A declaration and judgment declaring that Defendants have not infringed Swatch's purported Zebra Watch or Multi-Color Watch trade dress rights;

D. A declaration and judgment declaring that Defendants have not unfairly competed with Swatch or otherwise violated any of Swatch's purported rights under the Lanham Act or under New York State common law;

E. A finding that Defendants are not liable to Swatch because of laches and/or other equitable considerations;

F. A finding that this is an exceptional case and that Swatch is therefore responsible for all of Defendants' reasonable attorney's fees, costs and expenses;

G. An award to Defendants for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: /s/ Jeffrey E. Dupler ___________

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Attorneys for Defendants Target Corp. and Target Brands, Inc.

Dated: June 23, 2014

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2014, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

/s/ Jeffrey E. Dupler
Jeffrey E. Dupler